

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION**

**SIMON GARCIA, REBECCA GARCIA,
JOSE CAMPOS, and CHRISTOPHER
GARCIA**

Plaintiffs,

vs.

**SWIFT BEEF COMPANY, MANNY
GUERRERO, ASHLEY HENNING,
JACOB MONTOYA, and DONNA
ESTRADA,**

Defendants.

Case No. 2:20-cv-00263-Z

SWIFT BEEF COMPANY’S MOTION TO DISMISS

Defendant Swift Beef Company (“Swift”) hereby files its Motion to Dismiss and states as follows:

Plaintiffs contend they contracted COVID-19 at work and seek to hold Swift liable for allegedly failing to provide a safe workplace. There are three primary issues the Court must consider in determining whether to dismiss Plaintiffs’ negligence and gross negligence claims against Swift.

The first issue is whether Plaintiffs have stated cognizable negligence claims given their failure to plead facts demonstrating that (1) Swift breached a duty to Plaintiffs or (2) Plaintiffs were infected with COVID-19—and thereby suffered injury—as a direct result of that breach. Without such a breach and a causal connection between the breach and Plaintiffs’ alleged injuries, Plaintiffs cannot assert viable negligence claims, and their claims should be dismissed under Rule 12(b)(6).

The second issue is whether Plaintiffs' claims are preempted by the Federal Meat Inspection Act ("FMIA"), Executive Order No. 13917 ("Food Supply Executive Order"), and Defense Production Act of 1950 ("DPA") and whether the DPA provides immunity from liability under the circumstances of this case. Because (1) the Supreme Court has held that the FMIA contains an express preemption provision covering the precise issues in this lawsuit and (2) Plaintiffs' claims seek to impose duties on Swift that are contrary to and would serve as an obstacle to federal law, the Court should find that Plaintiffs' claims under Texas law are preempted and dismiss the claims in accordance with Rule 12(b)(6).

The third issue is whether this case involving workplace safety during the COVID-19 pandemic should be dismissed and referred to the Occupational Safety and Health Administration ("OSHA") under the primary jurisdiction doctrine. Faced with similar allegations that employers failed to provide safe workplaces and the high risk of inconsistent decisions if individual courts tackle the issues instead of allowing OSHA to interpret and enforce its own guidelines, other federal district courts have invoked the primary jurisdiction doctrine and referred cases to OSHA so that OSHA can employ its special competence and fulfill its mission of enforcing occupational safety and health standards. Thus, in the event this Court does not dismiss Plaintiffs' claims under Rule 12(b)(6), it should dismiss the case under the primary jurisdiction doctrine and refer it to OSHA.

In accordance with Local Rule 7.2, Swift is filing its Brief in Support of Swift Beef Company's Motion to Dismiss concurrently herewith and requests that the claims against it be dismissed for all the reasons stated therein. Swift is also filing its Appendix in Support of Swift Beef Company's Motion to Dismiss concurrently herewith in accordance with Local Rule 7.1(i).

Conclusion

For all the reasons explained above, in the Brief in Support of Individual Defendants' Motion to Dismiss, in Swift Beef Company's Motion to Dismiss, and in the Brief in Support of Swift Beef Company's Motion to Dismiss, the Individual Defendants respectfully request that Plaintiffs' claims be dismissed and that the Individual Defendants be granted all other and further relief to which they are entitled either at law or in equity.

Respectfully submitted,

/s/ Alexander Brauer

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**ATTORNEYS FOR DEFENDANT
SWIFT BEEF COMPANY**

CERTIFICATE OF SERVICE

On November 18, 2020, I filed Swift Beef Company's Motion to Dismiss with the clerk of court for the U.S. District Court, Northern District of Texas. I hereby certify that I have served the document on all counsel of record by a manner authorized by Federal Rule of Civil Procedure 5(b)(2).

/s/ Alexander Brauer

Alexander Brauer